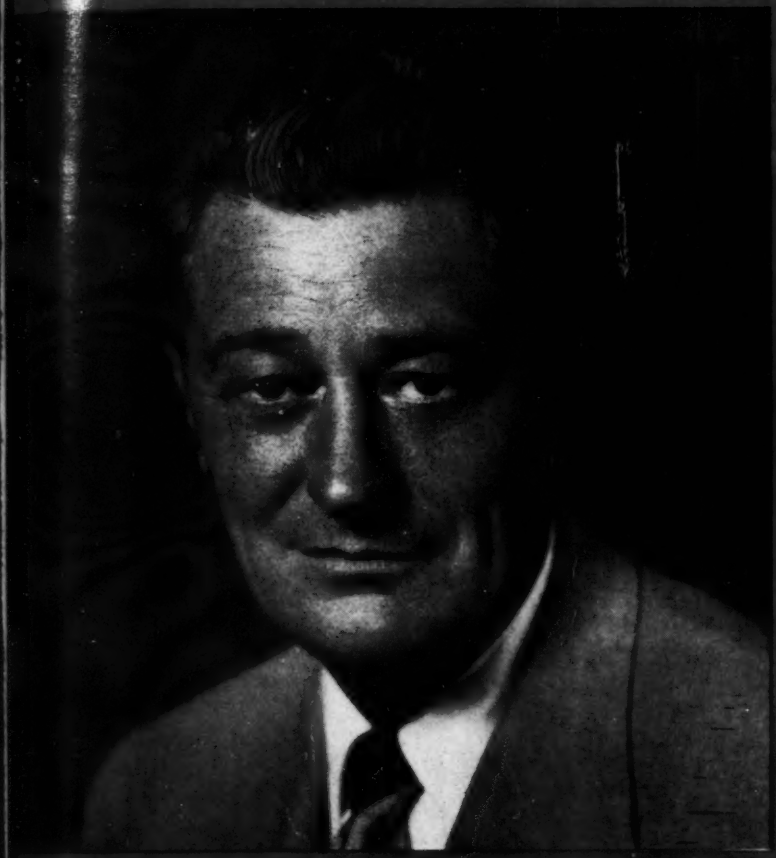

FEB. 1960

VOL. 35 No. 4

The Los Angeles BAR BULLETIN

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The Los Angeles BAR BULLETIN

VOLUME 35 • NUMBER 4 • FEBRUARY 1960

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ISSUE EDITOR: Herbert A. Smith

THE PRESIDENT'S PAGE

☆ ☆ ☆ ☆ ☆ HUGH W. DARLING

The Value and Importance of Bar Associations[1]

» » FOR MANY YEARS the Los Angeles County Bar Association's stationery has contained a quotation from Theodore Roosevelt reading "Every man owes some of his time to the upbuilding of the profession to which he belongs." The validity of this statement is not to be denied.

Upbuilding of the legal profession takes place both internally and externally.

The internal phase is concerned with seeing to it that incompetents be denied the privilege of practicing law and that the license of those who abuse the privilege be cancelled or suspended. Erecting revetments against the erosion of unlawful practices is another facet – important for laymen as well as lawyers. Constant vigilance is imperative to sustain the dignity of the profession and maintain lofty professional standards.

The external phase is directed towards nurturing a sturdy and worthy judiciary, fostering sound legislation and promoting favorable public relations.

It would be foolish rather than fearless, and contrary to the welfare of his clients, for one lawyer on his own behalf to censure an arrogant or indolent judge. But the picture has a different hue when someone speaking for all the lawyers informs that judge, courteously but resolutely, that his conduct on the Bench (or off) is inviting a cohesive Bar to place in motion corrective measures. The judge who fails to take heed lacks prescience, as a few who have been unrobed came to learn.

So, too, with the legislative branch. The recommendation of a single lawyer seldom is heard and even less seldom heeded. But the clear and penetrating voice of the entire Bar never is ignored by legislators, although not always fully followed.

Strengthening and upgrading any profession or any group can best be

[1]The scrivener of these scribblings is not unmindful of George Harnagel's edict, the encomiastic words of which were appreciated, in his Brothers-in-Law of the January issue to the effect that the final President's Page (this is it) should review the accomplishments of the outgoing administration. Since there was none of import changing the subject was thought to be the better part of valor.

accomplished, in fact only accomplished, by a solid front. Labor has its Unions. Management has its Merchants and Manufacturing Associations and lawyers have their Bar Associations. That is why every qualified lawyer in Los Angeles County should be a member not only of his local association if he practices or resides out of the central area but also of the Los Angeles County Bar Association, county-wide in its representation, and the American Bar Association, covering the nation.

If all the lawyers in this County were fully cognizant of the daily benefits that come to the Bar in consequence of the acts and existence of the Los Angeles County Bar Association our membership would be doubled. As a tangible instance, the low-cost group insurance made available to members repays the modest annual dues several times.

The Board of Trustees meets almost every week throughout the year and a fortnight seldom passes without some action being taken that is invaluable to lawyers.[2] A week day without a meeting of one or more of the standing committees is a rarity. Yet too many lawyers have the idea that the activities of the Association are confined to a monthly luncheon meeting, the annual Christmas Jinx and the publication of this BULLETIN. Parenthetically it might be noted that any one of these three features standing alone, particularly the BULLETIN with its lively new format, is worth the price of admission.

To the commendation of our profession, many firms throughout the County insist that all their partners and associates join the Los Angeles County Bar Association, with the tax deductible dues being paid as a proper partnership expense. If all firms, large or small, as well as individual practitioners, would follow this laudable example the voice of the County Association soon would have a decibel measure that could not be jammed.

[2]In December of 1959, after four years of research and preparatory work by author W. W. Robinson, aided by the members of the Publication Committee, Chairman Homer D. Crotty, Warren M. Christopher, A. Stevens Halsted, Jr., Robert Kingsley, Edward D. Lyman and William A. C. Roethke, the Association published LAWYERS OF LOS ANGELES (370 pp. $7.50), a lively and searching history of the legal profession in Southern California. Any lawyer practicing south of the Tehachapis who fails to read this superbly illustrated chronicle is denying himself a rich and rewarding treat.

ANNUAL MEETING OF LOS ANGELES COUNTY BAR ASSOCIATION

February 18, 1960—12:15 Biltmore Hotel

James V. Bennett, Director of Bureau of Prisons, Department of Justice will speak on Reconciling Legal Values and Corrections.

The new officers of the Association will be installed and the new members of the State Bar will be guests of the Association.

PROFILE

Grant B. Cooper

PRESIDENT OF LOS ANGELES BAR ASSOCIATION FOR 1960

By ROBERT B. KRUEGER

» » GRANT COOPER, the new President of the Bar Association, is a member of the University Club. I had lunch with him there the other day. As we passed one of the Club's bulletin boards I noted a display of newspaper clippings of Mr. Cooper and his current client, Dr. Finch, under the caption, "Members In The News." During lunch, we discussed this notoriety. Mr. Cooper, who enjoys the reputation of being one of the Los Angeles Bar's foremost criminal practitioners, was of the opinion that the Finch murder case is by far the most widely publicized and possibly the most interesting case he has tried. A strong contender on the latter point was the recent case of *United States v. Matula,* which involved a perjury charge against a labor union official.

We ordered rainbow trout, at the instance of Mr. Cooper, who is a seafood fancier. He is a compulsive fisherman, a member of the Tuna Club and the owner of a fishing boat. The boat, a thirty-five foot Chris-Craft (now styled "Hula Girl," but soon to be named "Corpus Delicti") had been purchased that very day. He took up fishing in earnest in 1948 when a friend, Dr. Edward C. Pallette (the brother of Attorney Warren S. Pallette) induced him to go on a deep-sea fishing excursion. His favorite grounds are the Gulf of California, more particularly around La Paz.

Aside from recreation, the sea played a rather fundamental part in our new President's coming to California. In 1923, at the age of 20, Grant Burr Cooper steamed from his home in New York City to San Pedro Harbor on the good ship S. S. Tulsagas, a tanker. While young Grant was not necessarily enraptured with his chores as an engine wiper, it was not until he talked to his uncle, John S. Cooper, that he seriously considered studying the law. His uncle, who was then the senior partner in the Los Angeles firm of Cooper, Collings & Shreve, explained the illusive charms of the law to the young seaman, who not surprisingly decided to forsake the sea. He enrolled in the Southwestern University School of Law and in off-hours clerked in his uncle's office. After his graduation in 1926, he again became seagoing for another year as a sextent observer on a U. S. Geodetic Survey boat which was then plotting the remote reaches of Humboldt Bay. On return to Los Angeles in 1927, he became a member of the Bar and associated with his uncle's firm. A desire for the litigation practice, however, attracted him to the office of the District Attorney, where he was admitted as a Deputy in 1929.

The landmarks of his subsequent professional path in government are pretty much a matter of record. He

successively became Deputy City Attorney of Los Angeles (1935-1938), Chief Deputy District Attorney, Los Angeles County (1940-1943) and Chief Assistant Insurance Commissioner (1943). In 1935 Mr. Cooper married Phyllis Norton, a student at the University of Southern California. Mr. Cooper insists that at U.S.C. she was somewhat of an intellectual, something he expressly denies being. When she graduated in 1935, she was on the debating team, Phi Beta Kappa and received the Dr. von KleinSmid Diamond Medal awarded annually to the graduate contributing the greatest intellectual worth to the University. That same year she attended a meeting of the Los Angeles Academy of Criminology with a family friend of the Nortons, ex-Los Angeles Police Chief Lee Heath, where, after a vigorous, if not enlightening discussion of the then recent Hauptman case she met Grant Cooper. After their marriage later in the year, she went on to the University of Southern California School of Law from which she graduated in 1938. In addition to being a capable practicing attorney, she is, as her husband loyally, ardently (and correctly, I might add) noted, a very fine looking woman. Certainly not an anomaly for women lawyers, but always pleasant.

She couldn't make our luncheon, but I did meet the rest of the firm: Ned R. Nelsen, Richard Moore and Maxwell Keith. Ned Nelsen was getting ready to leave for his honeymoon at Acapulco. Mr. Cooper had thoughtfully presented him with deep-sea fishing rod. I have found that this curious bent of mind often distinguishes litigators.

The Coopers have five children: Natalie (29), Judith (25), Meredith (20), Grant, Jr. (18) and John (13). Of the three eldest, Mr. Cooper pointed out only Judith was a "maverick." Judith's abberration, however, is no greater than in failing to graduate from SC, or to put it more correctly, in graduating from UCLA. None of the offspring are lawyers or prospectively so, with the possible exception of John, who has displayed some warning signs of the tedious tenacity and singleness of thought which are the principal indicia of our calling.

Mr. Cooper resumed private practice in 1944 when he became associated with the Los Angeles firm of Loeb and Loeb. In 1946, he opened his own office and has since largely practiced the criminal law which he so enjoys, although the firm's practice as such is divided almost equally between criminal and civil litigation.

Mr. Cooper believes that a great deal of his success in the law is directly attributable to his active and consistent participation in the various bar associations. At an early stage in his professional career, he became a devoted member to the Los Angeles Bar Association. In 1920, a former president of the association, Hubert Morrow, established the Committee of Junior Barristers and appointed an executive committee composed of one member from the five law schools then most widely represented in the Los Angeles Area, i. e. Loyola, Boalt Hall, Southern California, Stanford and Southwestern. Mr. Cooper represented the latter institution. The number of important offices he has since held in both the state and local bar associations is indicative of the energy and talent he has contributed to his profession. He has been a member of the Board of Governors of the State Bar (1953-1956) and Chairman of its Criminal Law and Procedure Committee (1950-1951). Prior to becoming

President of the local Bar, he was member of the Board of Trustees (1951-1952), Secretary (1956-1958), Vice President (1958) and Chairman of the Criminal Law and Procedure Committee (1958-1959). It was out of the State Bar's Criminal Law and Procedure Committee that another of his valued associations arose. According to Mr. Cooper the American College of Trial Lawyers had the committee as its nucleus. When the College was formed in 1950, Mr. Cooper consequently became a charter member, together with other outstanding Los Angeles litigators such as Herman Selvin and the late Jackson C. Chance.

Our new President's principal goals during his administration are (1) to establish a large and complete headquarters for the Association; and (2) to bring about a more active participation of the body of the membership in the Association's committees.

With respect to the first goal, Mr. Cooper visualizes a headquarters with restaurant and meeting facilities in the immediate vicinity of the new Courthouse. He pointed out that there is no major city bar association which does not have a center of this sort and that if the Bar Association wishes to be more than a loose, sporadic association, a center is mandatory for Los Angeles. Certainly the need here would seem to be greater than in most large cities where the membership of the Bar is not so widely dissipated. Mr. Cooper specifically has in mind a site on Temple Street near the Court House. He figured that with approximately 4,500 members in the Association, and contributions from those that could afford it the acquisition and building program could become a reality.

As to his second goal, Mr. Cooper would like to revamp the selection procedure for committees of the Association so as to permit no more than a two or three year tenure of membership. This would, he feels, permit a larger segment of the Association to participate. He would also like to see sections rather than mere committees established as to subjects in which a sufficiently large number of the members indicate an interest.

A less important but no less definite objective of Mr. Cooper's is to make the BULLETIN more readable. It is his belief that many of the articles printed are too esoteric for general interest to the Bar. Immodestly enough, I disagreed to the extent of pointing out that the BULLETIN even in its present form is a better magazine than the vast majority of journals of local bar associations, and in readability could certainly give the *State Bar Journal* a run for its money.

Mr. Cooper approves of the new format and publication policy of the BULLETIN. This will encompass in future issues more pictures and readable trivia. The basic question of article content, however, is one which Mr. Cooper agreed could only be solved by more extensive contributions by those members of our Bar whose interests are widest, i. e. the established and mature members of the Bar whose articles are the hardest to obtain.

Irrespective of whether Mr. Cooper is able to change the BAR BULLETIN for the better (a task which has seemed like the cleaning of the Augean Stables to some of his predecessors) you can be sure that he will try. And, you can be equally sure that the Association's new President is a capable, forthright and extremely likeable man who will do his best to maintain the high standards of the local Bar and improve its spirit and organization.

IMPOUNDS, ESCROWS, AND PROMOTION STOCK

By JOHN G. SOBIESKI

Commissioner of Corporations of California

Member of California Bar.
Stanford University, A.B. 1928, LL. B. 1930.
Harvard University, Special Student 1928-29.

» » THE FINANCING OF new and untried ventures must, obviously, be regularly accomplished if our national economy (wealth) is to continue to expand. Growth or decay apparently is a universal law of nature. And one principle on which all leaders: religious, political, labor, and business (regardless of creed, party, affiliation, or size) agree is that they and their supporters are all for growth and opposed to decay. I am sure you and I share their wholesome views.

In the past, new and untried ventures have been financed by government (Columbus' 1492 voyage of exploration, for example) by established corporations (nylon hose, improved uplift brassieres and tranquilizing pills, for example) and by individuals (the original Ford Motor Company, for example). And, of course, by combinations of the above (most railroad, steamship, aircraft and some banking corporations, for example).

There are obvious limitations on the ventures that can be financed by established business. For example, a company holding a favorable lumber contract and engaged in the business of making wooden crates, might see no advantage to it in financing a new and untried venture for making plastic crates. Our economic growth, therefore, should not be confined to ventures which established concerns find it desirable for them to finance. Greater growth will obviously result if our expansion is not so limited.

On the other hand, government financing of new and untried ventures raises many difficult questions. For example, if the taxpayers put up the risk capital, why should they not get the bulk of the profits? (The King of Spain in his contract with Columbus took the lion's share of the profits.) The best solution here, I think nearly all of us agree, is to avoid government financing of new business ventures whenever we properly can do so.

This short background discussion is intended to show why the continued financing of new and untried ventures by individual subscriptions appears to be a necessary and desirable part of our American way of life.

The policy of the Division of Corporations is, and so far as my researches indicate, always has been, to assist such financing in every proper way.

The importance of this type of financing, however, is equaled by its difficulty. The principal difficulties arise from ignorance. No one knows for sure what any venture will do in the future but with new ventures there is no experience of past operations which can be used as a reasonable

guide for forecasts. To illustrate the problem, let us consider the following hypothetical case. Professor Bigdome calls on Attorney St. Ives (a former student, now at the bar—all names herein are fictitious, any similarity to real persons is coincidental) and produces a metal tube with gadgets in it. He tells St. Ives that this invention of his, when attached to the exhaust of an automobile engine, will remove all smog producing particles from the exhaust fumes and convert them into small pellets which taste like licorice and, when taken internally, will cure baldness and have twice the therapeutical effects of monkey glands and royal jelly combined.

St. Ives at once sets to work. After learning the unfortunate fact that Bigdome has no cash, St. Ives (an inexperienced and idealistic man) goes ahead "on the cuff." After St. Ives has advanced time and funds for incorporation, he files an application with the Division of Corporations for a permit to sell stock to finance the venture. That is where he and Bigdome will meet our three friends: Impound, Escrow, and Promotion Stock.

These are three tools that have been developed principally to enable financings to go ahead despite the existence of major unknown factors.

In the hypothetical case, let us assume that our study of the application (and the supporting data) eventually disclosed that the device which St. Ives saw had been handmade and had been tested only during a thirty-minute running of Bigdome's 1912 Stanley Steamer automobile; that this running had produced only two pellets, which pellets had inadvertently been eaten by a guard on the football team while viewing an exciting episode in an "adults only" motion picture just imported from Europe. (The guard's athletic scholarship required him to assist the professor one-half hour each month.)

Let us further assume that, following conferences with the Division, St. Ives succeeded in formalizing his own fee claims, in getting the patent picture into reasonable shape, and in securing a waiver of rights from Seton U., the college where Bigdome taught. Let us further assume that a careful cost analysis shows that $200,000 will be required to complete a proper testing program to determine if the device will purify, or can be made to purify, the exhaust fumes during sufficiently long periods of time to make the device useful. Let us further assume that a lesser program of testing and research would apparently result in an unproven product. (Although the $200,000 figure would provide no funds for testing the pellets, it was concluded that a device that would control smog could later finance any necessary research on the pellets.)

St. Ives then contacts Messrs. Bucket & Bucket, brokers (the names are fictitious), one of whom he had met at the opera. They immediately like the idea and propose to raise the $200,000 through selling $250,000 of stock with a 20% commission to them on a "best efforts" underwriting. St. Ives murmurs that $50,000 seems a high commission but they point out that they will use radio and T.V. to advertise the stock and so their net fee will be much less.

Since St. Ives had had few contacts with brokers he did not know that there are two principal types of underwritings: "firm" and "best efforts." In the "firm" type, the broker agrees to pay the agreed sum on the settlement day. In the "best efforts," the broker agrees to pay only for those

shares he succeeds in selling. In the hypothetical case, the company will receive the necessary $200,000 only if Bucket & Bucket succeed in selling $250,000 of stock. This has obvious dangers to the public. For example, if Bucket & Bucket sell only $125,000 of stock, they might get $25,000 in fees and the company $100,000. But this might well result in total loss to the investors because, in the hypothetical case, $200,000 was necessary to prove or disprove the product. The investors, in such event, would lose—not because the product was no good, but because the financing arrangements were inadequate.

To meet this situation, Rule 393, (Title 10, Cal. Adm. Code) provides:

> "A new company financing by the sale of securities to the public shall be required to impound an amount which may be deemed necessary to initially finance the proposed enterprise."

Consequently, in St. Ives case, the Division would require the proceeds from stock sales to be impounded and not released to the company until $200,000 was available to the company.* The funds would then be released. Testing could then be commenced and carried to completion. The investors would then win or lose depending on whether the product proved valuable.

The impound device in this case protects against our ignorance as to whether or not the broker, on a "best efforts" underwriting, will sell enough stock to give the investors a "run for their money." If the required amount isn't sold, the money in the impound is returned to the investors.

A difficult minor problem is involved in these impounds. The Division, in the past, in many cases has required only 80% of the sales price to be deposited in impound, permitting the broker to keep his 20% commission on the shares, as sold. The brokers involved ordinarily told the Division that they needed these funds to pay their salesmen and advertising expenses. They have further represented that unless they could retain such commissions, they would be unable to undertake the underwritings. Since the Division desires not to hamper the new ventures, it has, in the past, permitted 80% impounds in some cases. But this means that if the impound condition isn't met, the purchasers not only never had a "run for their money" but also only get back 80% of their investment. (Most metropolitan banks now decline to be impound holders on less than 100% impounds.)

While all of us want to help new ventures, it is obvious that the broker is ordinarily in a better position than the investor to judge whether or not the broker will be able to sell enough stock to meet the impound. Therefore, it seems fair that the broker (not the investor) assume the risk of loss of broker's commissions if he fails in selling enough to meet the impound. A 100% impound has another advantage. If the broker gets no commissions unless he sells the required amount, he has a strong motive for being accurate in his estimation of whether or not he can sell the required amount. If, in any event, he gets full commissions on what he sells he may, unintentionally, encourage false hopes which only result in loss to all the other persons connected

*Ordinarily the impound would be required to include funds to finance initial manufacturing and other costs necessary to commence commercial operations. In St. Ives' case, however, the staff of the Division concluded that if the device was proven to be capable of purifying automobile exhausts, that commercial production, in such case, could be readily financed through conventional credit sources.

with the venture. I am not certain to what extent, if any, the practice of allowing 80% impounds ought to be continued. If any of you have any suggestions on it, please write me.

Having thus met "Impound," St. Ives next meets "Escrow" and "Promotion Stock." Rule 407 sets forth 11 grounds for an escrow. One of these (i) is a masterpiece of comprehensive statement:

> "That the escrowing of the securities is reasonable and necessary or advisable to effectuate the broad purposes of the Corporate Securities Law in protecting the general public."

In our suppositious case, the shares issued to Bigdome for his invention (to be discussed later) would be required to be escrowed. (Shares in escrow can't be sold or transferred without the written consent of the Commissioner.) The first reason for such escrow is to assist Bucket & Bucket in their effort to sell $250,000 of stock. Since the venture, presumably, will fail unless the $200,000 testing program can be completed, Bucket & Bucket deserve a clear field for their public stock sales. They should not have to compete with a promoter selling personal shares at possibly cut rates. The second reason for the escrow of the shares issued Bigdome is that such shares are classed as promotion shares and promotion shares are always escrowed at the time the permit is issued. St. Ives now meets our friend "Promotion Shares."

The reason why the shares to be issued Bigdome for his invention are classed as "promotion" is that we are ignorant, and will be ignorant, until the tests are completed, of the value, if any, of the invention. But the tests can't be made until stock is sold, and before the stock is sold, a decision has to be made as to what part of the venture will be owned by Bigdome for putting in the invention and what part will be owned by the public that puts in cash. This has to be told the public when the shares are sold to the public.

Of the classes of securities defined in Rule 368 as "Promotion" the principal one includes those securities "issued for . . . considerations, the value of which has not been established to the satisfaction of the Commissioner." Pursuant to Rules 368.2 and 368.6, the maximum amount of promotion securities issuable to Bigdome for his gadget is an amount equal to that issued to the public for cash to finance the enterprise. This means that the public which risked its cash should receive, long range, not less than half the profits. I have searched the old records of the Division and find that this idea of escrow and of promotion and of a 50/50 division of anticipated profits with the cash investors, was contained in a permit issued by Commissioner Carnahan in 1916. That case involved property which possibly contained copper ore.

In recent years, the Division has attempted to strengthen the position of the cash investors. While the company is in the development stage, the promotional shares are required to be subordinated to the cash shares as to dividends and upon dissolution (Rule 372). In the event of default in dividends for two years, the cash shares may be entitled to elect a majority of the directors (Rule 373). To make these limitations effective and to protect possible innocent purchasers of promotion shares from imposition, the promotion shares are required to be placed in escrow. When the company has proved itself, and the Commissioner's staff is no longer ignorant of the value of the company's assets, the pro-

motion shares may be released from escrow and their promotion character terminated upon a proper showing to the Commissioner that there is full par value behind all shares and that the release is otherwise fair and equitable.

St. Ives, having arranged all the documents in accordance with the above principles, a permit then issues and Bucket & Bucket commence to make their sales pitch to the innocent and eager radio and T.V. public. Without expressing any opinion on the pellets, I do hope that Bigdome's gadget will filter out the smog that makes it almost impossible for me to see this page.

In the present promotion stock policy, there is also a point that gives me concern. In the past, the Division has generally allowed 50% promotion whenever the promoter asked for it. The example of Bigdome, in our suppositious case, seems fair enough. But suppose, in another case, the promotion is to build a motel or a bowling alley. Suppose the promoter's services consisted in figuring out where would be a good location, taking an option on the site, and engaging competent architects and engineers. Should the promoter there be entitled to 50% of the stock as against the public that put up 100% of the money? Is his contribution equivalent to Bigdome's? This point also troubles me. I solicit your written comments on the propriety of allowing a 50% promotion in all cases where requested.

In this connection, the following facts may be relevant. In recent months, the public has apparently been willing to purchase shares in ventures where the promoters were to receive 50% of the stock for promoting motels or bowling alleys. During the fiscal year ended June 30, 1959, over 18,000 permits were issued by the Division of Corporations. Of these, only 233 involved 50% promotion, plus 20% selling expense. During the same fiscal year, the number of ventures for which permits had been issued in previous years, authorizing 50% promotion plus 20% selling expense and which qualified during fiscal 1959 for release of promotional shares from escrow, was 2.

Since I now am (unfortunately) one of the older members of the bar, I hope I may be permitted a few words of advice to young St. Ives. It seems to me that he went beyond the practice of law and became a principal promoter. Furthermore, he advanced some cash and a large amount of time, none of which will be paid for unless Bucket & Bucket succeed in selling $250,000 of stock. (And, since they objected to a 100% impound, his optimism concerning their full success should be "guarded.") While I do not wish to criticize brokers whom one meets at the opera, I suggest he should also have canvassed other brokers until he found one ready to act as promoter or who could secure an executive who would act as promoter, leaving St. Ives the legal work. Under such leadership a stronger financial program conceivably could have been worked out, particularly one which did *not* involve 50% promotion plus 20% sales commissions. As mentioned earlier, the prospects of success of such ventures are poor. But as the sale commissions and promotion ratios go down, our statistics show a rise in the numbers of securities released from escrow. Ventures that have minimum dilution of the investors' funds apparently return more on average to all concerned, than those where the promoters and the brokers seek to secure for themselves, the maximum permitted by our rules.

the VIEW from the IVORY TOWER

LEGISLATIVE RESEARCH IN CALIFORNIA: The Uncharted Wilderness

By ARVO VAN ALSTYNE and MITCHEL J. EZER

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» » RESEARCHING STATUTORY LAW in California is often a difficult task, sometimes an impossible one. Much of the material needed to do a thorough job is unavailable. Either it was never published, or never distributed to the law libraries. Worse, even that which is accessible is often inadequate. Some publications are poorly indexed, or not indexed at all, or the index is pragmatically unlocatable. Once research is begun, impasses suddenly eventuate just as the researcher is hot on the trail of that which he seeks. Nor are his problems always resolved if he finds what he set out to locate, for there are pitfalls and hidden traps aplenty in the material itself. The discussion to follow will, if heeded, preclude attempts to locate material that does not exist, and assist even the experienced through the uncharted wilderness of that which is available.

STATE LEGISLATION

The Constitution

The basic law of California is, of course, its Constitution.[1] Like the Federal charter, it establishes basic principles of governmental organization and imposes limits on the powers conferred. But the California Consti-

EDITOR'S NOTE: *In its November and December, 1959 issues, the* BULLETIN *commenced a feature entitled* "The View from the Ivory Tower." *This feature is designed to present viewpoints and ideas of professors of law in Southern California. The following article, which the editors consider of unusual interest and importance, will be run in two installments. The second installment will constitute next month's* "View." *The April column will feature an article by Professor Murray Schwartz of the UCLA School of Law, on training in law schools for professional responsibility.—The Editor.*

tution, unlike its Federal counterpart, also contains a huge mass of material which is really statutory in nature. It delves into minutiae with a vengeance;[2] so much so, that it is now some 75,000 words long as compared to 7,500 in the Federal charter.[3] Consequently, the fundamental principle that a Constitution should be only a statement of general truths designed to resist the pressures of the moment and preserve the basic tenets of government has long since been forgotten in California. This sprawling and prolix mass of quasi-statutory material has become subject to what has been well described as amendomania[4] Our Constitution was amended 343 times in the period from 1880 to 1940,[5] and the process continues merrily on.[6] Contrast the Federal charter which has been changed only 22 times in 170 years, with the first ten amendments—the Bill of Rights—realistically a part of the original document. One cannot, therefore, regard the California Constitution with the same reverent awe accorded to the Federal. Everyone practicing or planning to practice law in California should be familiar with its Constitution, particularly the quasi-statutory provisions contained therein. And, more important, remember that no research project involving California law is complete until the index to the Constitution is checked. Absent careful constitutional research, an opinion on the existence or nonexistence of controlling law is pragmatically valueless.

The Statutes

In order adequately to research California statutory law, one must first

[1]Copies of the State Constitution can be found in many publications. The two most easily accessible to the practitioner or student are West's California Constitution Annotated, (3 Vols., 1954); Mason's California Constitution Annotated (2 Vols., 1953). The former is usually shelved at the front of the West Publishing Company's edition of the California codes; the latter at the front of the Deering edition of the California codes.

California operates today under its second Constitution. The first was adopted in 1849, but proved to be so unworkable that a second constitutional convention was assembled in 1879. This produced the present—1879—Constitution, adopted on March 3 and ratified on May 7 of that year. A fairly complete and most interesting description of this historical panorama will be found in Palmer & Selvin, *The Development of Law in California,* in 1 WEST'S CALIF. CONST. ANN., 1, 13-28 (1954) [hereinafter cited as *Palmer & Selvin*].

[2]To determine where to bring an action quieting title to land, for example, one would consult not the statute books but Article 6, Section 5 of our Constitution.

[3]*Palmer & Selvin* 26-27.

[4]Note, *California Constitutional Amendomania,* 1 STAN. L. REV. 279 (1949).

[5]*Palmer & Selvin* 21.

[6]For example, the 1958 elections produced 7 constitutional amendments. See Calif. Stats. 1959, at vi.

be familiar with the State's legislative process. Since the procedure employed by the California Legislature was changed in November of 1958 (by constitutional amendment[7]), the following material will summarize both the legislative process to be and that which has been to clarify what might otherwise be a very confusing picture.

The California Legislature consists of two Houses—Senate and Assembly—which convene annually at Sacramento. The general legislative session has been held, and will continue to be held, only during the odd-numbered years—*e.g.*, 1957, 1959—[8] commencing in January on the first Monday after January 1.[9] Formerly, the meeting was split into two sessions. The first lasted for a maximum of 30 days, and was followed by a recess of not less than 30 days. The total meeting—the January session plus the post-recess assembly—could last not longer than 120 days overall.[10] Under the 1958 amendment, the bifurcated session was abolished by eliminating the recess requirement. Also, the total length of the general session was extended from 120 to about 166 days by excluding Saturdays and Sundays in calculating the 120 day period.[11]

Besides the general session, there are also sessions convened during the even-numbered years which are confined to considering budget matters.[12] Additionally, extraordinary assemblages are often summoned by the Governor to deal with special matters.[13] The procedure utilized in these sessions is not affected by the 1958 amendment.

In the past, the January segment of the general session was confined mainly to the initiation of bills.[14] During this meeting, a legislator could introduce as many bills as he wished. Following the recess, however, he was restricted to introducing no more than two bills unless he received a limit-waiver by the House of which he was a member. To evade this restriction, an extensive practice evolved of introducing "spot" or "skeleton" bills during the pre-recess session. These consisted of little more than a title into which specific material was later incorporated by amendment. This useless and cumbersome procedure was also eliminated last November; bills may now be introduced at any time that the legislature is in session.[15]

After introduction, a bill is immediately printed and placed in what is known as the first reading file.[16] In due course, the title of the bill is read aloud and the chairman assigns it to a committee for detailed consideration. Hearings are then held in much the same manner as is employed by Federal congressional committees. The State legislative committees do not amend bills, however, but only recommend amendments to the House of which they are a part. Once the

[7]Assembly Constitutional Amendment No. 36 (1958), appearing on the November 1958 Election Ballot as Proposition No. 9. The proposal was adopted and is now incorporated into the Constitution as art. 4, §§ 2(a) and 2(b).

[8]CALIF. CONST., art. 4, § 2(a), para. 2.

[9]*Id.*, para. 4.

[10]See 1 WEST'S CALIF. CONST. ANN. art. 4, § 2(a), at 712 (1954); 1 MASON'S CALIF. CONST. ANN., art. 4, § 2(a), at 382 (1953).

[11]*Compare* 1 WEST'S CALIF. CONST. ANN., art. 4, § 2(a), at 712 (1954), *with id.*, 1959 Pocket Supp., at 80; *compare* 1 MASON'S CALIF. CONST. ANN., art. 4 § 2(a), at 382 (1953), *with id.*, 1959 Pocket Supp., at 84.

[12]CALIF. CONST., art. 4, § 2(a), para. 3.

[13]*Id.*, para 1.

[14]The material in this paragraph was drawn mainly from MORLAN, ANALYSIS OF MEASURES ON THE CALIFORNIA BALLOT – NOVEMBER 4, 1958, at 12.

[15]The only limitation placed on this was that no bill except the budget bill could be heard by committee or acted upon by either house until 30 calendar days after its introduction. This requirement can be waived by a three-fourths vote of the house in question. CALIF. CONST., art 4, § 2(a), para. 5.

[16]A more detailed discussion of the material covered in this paragraph will be found in OHNIMUS, THE LEGISLATURE OF CALIFORNIA 45-56 (1957).

committee process is completed, the bill is reported back. If favorable action is recommended, or an amendment to the bill suggested, the bill enters the second reading stage. When amendments are not approved, or additional amendments are offered from the floor, the bill is sent back to committee and later returned for another second reading, a process which may be repeated many times. Eventually, the report is approved, all amendments are accepted, and the bill passes into the third reading file. Now it is open for discussion on the floor, though this seldom occurs. Bills which reach the third reading stage are usually approved as a matter of course. The third reading is the date of final passage of the bill. It is then sent to the other House where exactly the same procedure is repeated. For both Houses to concur in a single version, a conference committee sometimes must be assembled. Eventually, though, the bill hurdles all obstacles, is enrolled (engrossed) as an act, and sent to the Governor. His signature converts it into a Law.

Legislative History (Herein of Legislative Intent)

Understanding the legislative process just outlined is essential to the researcher interested in ascertaining the pre-enactment background of a statute. For, obviously, one cannot even begin to explore legislative history unless one first knows what materials accrue to an idea as it is transmuted into law.

In California, the best starting point for historical research is the Final Calendar of Legislative Business,[17] an annual publication issued to cover all legislative sessions (general, budget and extraordinary) held in that year. The Final Calendar summarizes the action taken on every bill introduced during the period it embraces. Each issue is unto itself; no cumulative volumes or indices are available. When researching topically—*i.e.*, when the researcher knows the year of passage and the statutory subject matter—the relevant bill can be located by using the Legislative Index section of that year's edition. Most often, though, research proceeds backwards from statute to bill; then, an impasse will be encountered, as the codes refer to, and the session laws are indexed by, chapter numbers, while the Final Calendar is compiled and indexed by Senate and Assembly bill numbers. The most effective method for converting chapter into bill numbers is to refer to a special table contained in each Final Calendar for laws enacted at that session.[18] Then check the Senate or Assembly Final History section where, in chronological order, will be found a concise summary of the bill's history prior to passage.[19] Armed with this information, the researcher can begin to look for the authoritative legislative history materials.

Unfortunately, a fully documented legislative history, and consequently clear legislative intent, is a concept vir-

(Continued on page 128)

[17]This can usually be located through a law library card catalog by checking "California, Legislature, Final Calendar."

[18]The table is captioned "Chapter Numbers of Assembly and Senate Bills Approved by the Governor for the ..... Session." It can be located by checking the word "Chapter" in the table of contents prefacing the "Assembly Final History" section of each Final Calendar. An example of this table will be found in the 1959 Final Calendar, Assembly Final History Section, at 234-43.

[19]See, *e.g.*, 1959 Final Calendar of Legislative Business, Senate Final History Section, at 135-522. The Final Calendar contains many other tables—more than can be described here. It should always be consulted first when attempting to locate information about any phase of legislative operations that lends itself to tabular compilation.

Professional Partnerships Taxable As Corporations

By JOHN O. PAULSTON

Member of the
Los Angeles County Bar Association
Committee on Taxation.

» » THE INTERNAL REVENUE CODE provides its own definition of a "partnership" for Federal income tax purposes, as follows:

> "For purposes of this subtitle, the term 'partnership' includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, *and which is not, within the meaning of this title, a corporation.* . . ." (I.R.C. § 761(a); emphasis added.)

This leaves the definition of a partnership dependent on the definition of a "corporation" for tax purposes.

Every Federal revenue law, from the 1917 Act (see Rev. Act of 1917, § 200) to the 1954 Code (see I.R.C. § 7701(a) (3)), has defined the word "corporation" as including "associations." The word "association" has never been defined in any Federal Code or Revenue Act. However, it is well established, by the Regulations and decisions, that there may be included in the category of a *corporation*, for tax purposes, an organization which is clearly *not* a corporation under the local law.

The leading case is *Morrissey v. Commissioner*, 296 U.S. 344, 347, 16 AFTR 1274 (1935), where the Court emphasized that "The inclusion of associations with corporations implies resemblance; but it is resemblance and not identity." The salient features of "resemblance" which it considered to be controlling were (1) an organization of persons for the transaction of business as a common or joint enterprise, (2) centralized management, (3) continuity of existence for the agreed period, unaffected by death of any beneficial owner, (4) transferability of beneficial interests, and (5) limitation of personal liability.

The Regulations under the 1939 Internal Revenue Code were not particularly helpful in distinguishing between an organization which would be treated as a partnership for tax purposes, and one which, although unincorporated, would be classified as an "association" and hence treated as a corporation for tax purposes. (See Reg. 118, § 39.3792-2, and § 39.3797-4.) And the decisions, although adhering to the general principles stated in the *Morrissey* case, *supra*, have produced varying, and not always predictable, results according to the emphasis placed on the presence or absence of one or more of the factors of "resemblance" to a corporation as identified in the *Morrissey* opinion. (See 7 Mertens, *Law of Federal Income Tax-*

ation, Chap. 38A, and particularly § 38A.30; Rabkin and Johnson, *Federal Income, Gift and Estate Taxation*, §§ 2.10 to 2.12; Krystal, "Partnerships Taxable as Corporations," 1950 Univ. of So. Calif. Tax Inst. 137; and Paulston, "Limited Partnerships in Tax Planning," 1957 Univ. of So. Calif. Tax Inst. p. 219, 238.)

Ordinarily, it is the Government which asserts that an organization is an "association" taxable as a corporation, rather than a partnership, while taxpayers ordinarily oppose this view. However, it may be advantageous to the taxpayer to have an organization treated as a corporation for tax purposes, in which event the traditional positions of the respective parties will be reversed. Thus, in *United States v. Kintner*, (9 Cir. 1954), 216 F. 2d 418, a group of doctors were seeking to support their inclusion under a pension plan as "employees" of an unincorporated organization. Since partners are not "employees," it was essential to their case that they establish that the organization, although unincorporated, was an "association" under the tax law, and hence to be treated as a corporation for all tax purposes. This they proceeded to do.

The general applicability of the principle of the *Kintner* decision to organizations of professional people (including lawyers) would not be too important if Congress would adopt some form of retirement program for persons who are not "employees." (See, for example, "The Self-Employed Individuals' Retirement Bill of 1959" (H. R. 10).) However, in view of the continuing uncertainty as to when if ever such a program will be adopted into law, considerable interest has been manifested in the possibilities of professional partnerships generally adopting the device utilized in the *Kintner* case. On the other hand, possibly because of the uncertainty and instability of the Government's position in regard to the *Kintner* type of plan, there does not appear to have been widespread use of this approach.

Recently-proposed Regulations under the 1954 Internal Revenue Code provisions defining partnerships and corporations (see Reg. § 301.7701, Fed. Reg. Dec. 23, 1959), have been hailed by the popular tax services as clearing the way for a broader use of *Kintner*-type "associations" by professional groups. A study (admittedly non-exhaustive) of these proposed Regulations, however, leads the writer to the conclusion that there are still substantial uncertainties in regard to the general applicability of the *Kintner* decision to organizations of professional groups.

It is true that the proposed new Regulations amplify considerably the prior Regulations both from the standpoint of their statements of the general principles, and from the standpoint of their statement of examples of the application of these principles. Each of the examples, however, is phrased in terms of basic assumptions of fact and law. In any life and blood problem it may be exceedingly difficult to determine which of the assumptions should be made.

As an illustration of the difficulties remaining, consider the assumptions made in certain of the examples relating to the factor of "centralized management," only.

Thus, in an example of an organization composed of a group of doctors which the Regulations say will be classified as an "association" for tax purposes (see Reg. § 301.7701-2(g), Example (1)), it is stated in part that "The management of the clinic is vest-

ed exclusively in an Executive Committee of four members elected by all the members, and no one who is not a member of the Committee has the power to bind the organization by his acts." On the other hand, in an example of an organization composed of lawyers which it is stated will be classified as a partnership rather than an "association" (see id., Example (3)), the key statement of "fact" is that "While their agreement provides that the management of the organization is to be vested exclusively in an Executive Committee of five members elected by all the members, this provision is ineffective as against outsiders who had no notice of it; and, therefore, the act of any member within the scope of the organization's business binds the organization insofar as such outsiders are concerned." Under the Uniform Partnership Act (enacted in California as Corporations Code Sections 15001 and following), every general partner is an agent of the partnership for the purpose of its business, and the act of every general partner apparently in the course of carrying on the business of the partnership binds the partnership unless the partner so acting has in fact no authority so to act and the person with whom he is dealing has knowledge of this fact. (See Cal. Corp. Code § 15009(1).) This provision is, of course, in effect a part of every general partnership agreement. Therefore, so far as the factor of "centralized management" is concerned, the effect of the Regulations seems to be that if there is a general partnership under local law there cannot be "centralized management." Thus, by circuity, we get back to the question whether there is a partnership under the local law. This is not particularly helpful.

Considering this same factor of "centralized management" in the case of a limited partnership, we find that the proposed Regulations seem to adopt the view that every such partnership, by its very nature, meets the "centralized management" requirement for an "association." (See Reg. § 301.7701-2(c), and particularly (c)(1) and (4).) That this may be open to question, see *Glendser Textile Co.*, 46 B.T.A. 176, and 1957 U.S.C. Inst., 219 at 245 et seq. Furthermore, in considering the effect of the general principles stated in Section 301.7701-2 of the Regulations, it is important to note that there are other provisions relating specifically to limited partnerships. (See Reg. § 301.7701-3(b).) And, if the examples given under these specific limited partnership provisions make anything "clear," it is that it will still be difficult to identify organizations which, although in the form of limited partnerships, will be classified as "associations" for tax purposes.

It is difficult to say whether the newly proposed Regulations may be helpful in any particular case. In any event, before relying on any provision therein, they must be carefully examined in their entirety, and read and understood in the light of the years of controversy that have preceded their adoption.

notes from your Law Library

by JOHN W. HECKEL • Head Reference Librarian, Los Angeles County Law Library

CORPORATIONS: George D. Hornstein is the author of a 2 volume work on *Corporation Law and Practice* (St. Paul, West) which attempts to organize and make intelligible the modern law of corporations. California is one of the 10 states given emphasis. Tables and a detailed index are included.

COURTS: Judge Charles S. Desmond's *Through the Courtroom Window* is a collection of criminal cases mostly involving murder, which have gone through the New York Court of Appeals. Citations are given. (St. Paul, West, 256 p.)

ECONOMIC AND SOCIAL POLICY: *Planning for Freedom* by Eugene V. Rostow (New Haven, Yale University Press, 437 p.) is a study by the Dean of the Yale Law School of the factors such as monetary policy, market organization and labor relations which affect modern capitalism without influencing its basic structure. W. Friedman's *Law in a Changing Society* (London, Stevens, 522 p.) demonstrates the role of law in social change throughout the world.

GOVERNMENT CONTRACTS: Federal Pub. Inc., Washington, D. C. has started a useful *Government Contracts Citator.* It is an alphabetical list of government contracts cases followed by the cases which cite them. In this way the authority of any case can be determined. The *Citator* is issued quarterly in March, June, September and December.

IMMIGRATION: *The Security Aspects of Immigration Work* by A. T. Bourcaren (Milwaukee, Marquette University, 213 p.) deals with the practical administration of the immigration laws and regulations from the point of view of security considerations. Three parts of the book deal with visa operations, exclusions, deportations and denaturalizations and a summary of existing law. The fourth part is a conclusion and recommendations.

JURISPRUDENCE: *Natural Justice* by H. H. Marshall (London, Sweet and Maxwell, 201 p.) traces the concepts, in English law, that no man shall judge his own cause and both parties shall be heard. These principles result from the application of natural law to the administration of justice in the courts.

LABOR LAW: *Discipline and Discharge in the Unionized Firm* by Orme W. Phelps is a study based in large part on arbitrators' decisions in disputes involving union discharges. (University of California Press, 149 p.) The problems of discipline, incompetence and negligence, misconduct, and violation of the company agreement are covered.

MARITIME LAW: *The Law of Maritime Personal Injuries Affecting Har-*

bor Workers, Passengers and Visitors by Martin J. Norris (Mt. Kisco, Baker Voorhis & Co., 551 p.) is concerned with the use of the Jones Act and its widening influence in maritime actions. Some forms are included.

TAXATION: *Fringe Benefits and Their Federal Tax Treatment* by H. H. Macaulay, Jr. (New York, Columbia Univ. Press, 246 p.) is a review of the development of fringe benefits and the problems they create in public finance. A second part deals with specific benefits such as retirement benefit, life insurance and health insurance. The book is written from a public finance and economic point of view.

TAXATION: *The Handbook of Annotated Forms for Tax Practice* by Sidney I. Roberts is a new edition of an old standby. (Englewood Cliffs, Prentice-Hall, 725 p.) It contains forms for filing returns and for procedure before the Tax Court.

PATENTS: Harry Kursh has written *Inside the U. S. Patent Office* (New York, Norton, 171 p.) as a simple guide to the history and practice of the patent office. Some sample patent forms are included along with a bibliography. A more detailed treatment, but still along the same lines is *Inventions, Patents and Their Management* by Alf K. Berle and L. Sprague de Camp. (Princeton, Van Nostrand, 602 p.) It is designed for the inventor and contains a glossary and bibliography, but no forms. *The Sources of Invention* by John Jewkes and others (London, Macmillan, 428 p.) is a study of inventions and inventors with collection of case histories of things such as DDT, helicopter, jet engine, safety razor and the zip fastener.

PRICE DISCRIMINATION: Corwin D. Edwards' *The Price Discrimination Law, A Review of Experience* (Washington, D.C., Brookings Institution, 698 p.) covers twenty years under the Robinson-Patman Act with stress on the litigation of economic issues and resulting modifications of business practices. The study is based on the public records and also field interviews of the firms involved.

STATE PUBLICATIONS: The California Administrative Code has been enlarged by the addition of Title 24, Building Standards. It consists of two parts, the first is an occupancy table, and the second an alphabetical guide to the other titles of the code and state law where building standards are established. This new 220 p. title is available from the Printing Division, State Printer, Sacramento 14, Calif. for $3.00 plus tax.

EXTENSION OF TIME FOR FILING INDIVIDUAL INCOME TAX RETURNS

R. A. Riddell, District Director of the Internal Revenue Service, advises that every individual requesting an extension of time for filing his income tax return will be required to furnish *all* of the following information:

1. Why he needs more time.
2. How much time is needed.
3. Whether he filed and made timely payments on any required Declaration of Estimated Tax for the year.
4. Whether each of his returns for the last three years was filed on time or within an *approved* extension.

Copies of Form 2688 for requesting extensions of time for filing an individual income tax return are available at internal revenue offices. However, letters or other informal written applications for extensions will be acceptable provided they contain the necessary information and are signed by the taxpayer or his duly authorized representative. Applications for extensions of time for corporations shall be made on Form 7004.

Mr. Riddle stated that in fairness to the tens of millions of taxpayers who file their returns on time, the Service must do everything reasonably possible to grant extensions only when there is a real need for more time.

The View from the Ivory Tower

(Continued from page 119)

tually unknown in California. In the first place, there are no records of floor debates and proceedings such as are collected in the Federal Congressional Record. Instead, the California Legislature employs Journals – brief outlined minutes summarizing the action taken on all bills.[19a] The Journals, fortunately, occasionally give information from which one can educe a form of legislative intent. By checking through the minutes to determine if amendments originated on the floor rather than by committee recommendation, one can at least determine which bills were subjected to scrutiny by the Legislature as a whole rather than just the committee which reported it.[20]

The gravest difficulty in determining legislative intent arises from the fact that two of the most fruitful sources thereof – committee hearings and reports–are in general not publicly available.[21] Hearings do not circulate because the stenographic transcript, if kept at all, is rarely translated into print.[22] True, some committees will occasionally publish their hearings in the form of mimeographed pamphlets. But this gesture does little to alleviate the general aridity, for there is no procedure for depositing and filing either transcripts or pamphlets in either the State Library or any other central location.[23] Moreover, the number of reprints prepared is often not sufficient to supply the demand of both interested parties and the various law libraries;[23a] as might be imagined, the libraries run a poor second. Nor is there a compiled index of what has been published. Library research for hearings on a specific bill is thus an attempt to locate the proverbial needle in a haystack. The researcher should, therefore, write directly to the legislative committee, request a reprint of whatever hearing is of interest, and hope for luck.

The same haphazard obtainability also prevails in the area of committee reports. In the California Legislature, committees are divided into two basic categories – interim and standing. Standing committees consider almost all bills introduced at each session and make recommendations thereon to the Legislature. Yet standing committee reports–which would be invaluable determinants of legislative intent–do not exist.[24] The interim committees, in contrast, rarely consider specific bills, but are usually established to study a specific problem and recommend rectifying legislation.[25] Interim committees, fortunately, publish some reports–usually, of their long-term investigations. However, the ratio of interim committee reports to total bills passed during a legislative session is so small that the chances of finding a

[19a] These can usually be located through a law library card catalog by checking "California Legislature, Journals."

[20] See, *e.g.*, 3 JOURNAL OF THE CALIFORNIA SENATE 4855 (1957) (Consideration of Assembly Bill #871).

[21] REPORT, STANDING AND INTERIM COMMITTEES OF THE CALIFORNIA LEGISLATURE 15-16 (Prepared for the California Citizens Legislative Advisory Commission by the Bureau of Public Administration, University of California, Berkeley) (May 1959) [hereinafter cited as REPORT ON STANDING AND INTERIM COMMITTEES].

[22] *Id.* at 86.

[23] *Ibid.*

[23a] *Ibid.*

[24] *Id.* at 15. The system of not preparing formal reports to accompany bills favorably reported out of committee has been sharply criticized. *Ibid;* see *id.* at 63.

[25] *Id.* at 24. The trend is shifting somewhat. Interim committee consideration of specific legislation has been increasing in recent years. *Id.* at 17, 24.

report on any given enactment is relatively remote. Furthermore, inadequate indexing complicates the task of locating the reports that do exist. For example, although each year's reports are inserted as appendices to the legislative journal for that year, the only index therein is the annual noncumulative table of contents.[26] True, there is a central index of all interim reports, but it covers only the years since 1955[27] and is available in only a few law libraries. Indeed, even this index is not complete, for the committees can (and do) have reports printed without informing the indexing authorities.[28] Since 1955, interim committee reports have been numbered, a service greatly simplifying the researcher's task. Once a report number is located, the material is easily found, for most libraries shelve this material in numerical order by session. If a report number is unavailable, an attempt should nevertheless be made to find a pertinent report through the law library card catalog,[29] or the indices that are accessible, as this material admirably documents legislative intent.

There are oases in this desert of unavailable material, however. "Slip bills"—reprints made every time a bill is amended before final passage—are widely circulated and to some extent indicate legislative intent. All additions are printed in italics and deletions in strike-out type.[30] Compare all slip bills for a single act, note the changes progressively, and the pur-

[26]See, *e.g.*, 1 APPENDIX TO THE JOURNAL OF THE CALIFORNIA ASSEMBLY (1957 Regular Session), at 3-6.
[27]REPORT ON STANDING AND INTERIM COMMITTEES 86.
[28]*Ibid.*
[29]Those reports the library has available can ordinarily be found through the card catalog by checking "California Legislature, Assembly (or Senate), Interim Committee on ....., (Name of Report)."
[30]OHNIMUS, *op. cit. supra* note 16, at 50.

pose of the legislature is partially clarified.[31]

Moreover, if the law being researched was drafted by the California Code Commission, as part of its exhaustive revision of the codes, there are other legislative intent determinants. Once the initial drafting process was completed, tentative copies of each code were prepared. When finally enacted, many of these sections differed from their tentative form. Hence, by comparing a proposed code section with the same section as finally enacted, one can glean some inkling of the Legislature's intent. While concededly somewhat farfetched, this method has its advantage in the fact that the material is available to the researcher; indeed, the proposed codes can be found in every good law library in California.[32]

Finally, there are various miscellaneous references of some value when exploring legislative history. The California Law Revision Commission, which conducts studies of needed statutory changes and recommends specific legislation, has now published a series of twenty reports.[33] Much of their work will, no doubt, eventually be enacted into law. This is excellent material and is available, but since the Commission commenced operations in 1953, what has been published so far covers only a few limited areas. Next, there are the annual California State Bar reports issued to accompany statutory changes recommended in connection with the State Bar Legislative Program. These are published in the State Bar Journal.[34] As these proposals often become law, this source is also a fruitful repository of legislative history. Last but not least, a fairly effective method of researching the background of a bill is to call its author and ask him what the legislature intended to accomplish by enacting it. Sometimes, he will be of great assistance; just as often, however, he will probably recall neither the bill itself nor the fact that he is its author.

(To be continued in next issue)

[31]All necessary information on amendments (and, consequently, reprintings) can be obtained by consulting the Final Calendar of Legislative Business under the appropriate bill number.

[32]The proposed codes are card catalogued under "California Code Commission, Proposed ..... Code."

[33]These can be located by checking the library card catalog under "California Law Revision Commission—Reports, Recommendations, and Studies."

[34]See, *e.g.*, Mull & Farley, *1957 Legislative Program*, 32 CALIF. S.B.J. 13 (1957).

BROTHERS-IN-LAW

By GEORGE HARNAGEL, JR.

Operation Oberweiss

Of our readers who are Clamoring for a further report on the Seemingly Spurious Will of Herman Oberweiss,[1] we request Patience. We are Diligently pursuing our further Investigation, but it appears that we have a Herr by the Tale.

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Dr. William B. Stern, foreign law librarian, Los Angeles County Law Library, is also chairman of American Association of Law Libraries' Committee on Foreign Law. In the latter capacity he is in charge of a significant new project being undertaken by the AALL with the help of a grant from the Ford Foundation: The publishing of an *Index to Foreign Legal Periodicals* covering approximately 250 publications in the fields of international and comparative law from almost all of the countries of the civilized world.

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This Is No Phony

On the contrary, it comes to us on unimpeachable authority.

Over at Lawler, Felix & Hall internal operations are streamlined, including telephone procedures. Thus, when someone wants to make a phone call he picks up the receiver and, when their operator comes on (no doubt instantly), he merely utters the name of the person to be called. None of this "Please get me Mr. Jones" or other time-consuming falderal. All went well until a new relief operator happened to be on duty and Marcus Mattson wanted to talk with the retiring President of our Association. "Hugh Darling," he said. Only that and nothing more. Back came the icy admonition: "The name is Tina."

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THE VERY LATEST THING IN TORTS

Journal of Legal Education is the trade paper of the American law school professor. It is published by The Association of American Law Schools (of which Dean William L. Prosser of the University of California Law School at Berkeley is currently President) and is edited for the Association by the Faculty of Law, Duke University. As might be expected, it exudes erudition. Each issue normally consists of several scholarly articles, and of three departments entitled, respectively: "Comments," "Law School Developments" and "Book Reviews."

The "Comments" section is a sort of glorified letters-to-the-editor department. Its expressed purpose "is to afford an opportunity for informal exchange of ideas on matters related to legal education." Normally its contents are just as serious and scholarly as

[1]Los Angeles Bar Bulletin Vol. 35, No. 1, p. 30 and No. 2, p. 53, November and December, 1959.

the lead articles themselves, although somewhat shorter. Typical titles from a recent section include: "The Necessity of Policy Guides in Legal Historical Research," "Legal Education in India," and "Some Views on Law in the Curriculum of the Collegiate Schools of Business."

We were particularly intrigued by the following title in the same "Comments" section: "Unprivileged Refusal to Reap Where One Has Not Sown." It proved to be a delightful, tongue-in-cheek piece by Harold W. Horowitz, professor of law, and Victor S. Netterville, associate professor of law, University of Southern California. It is given over to unrestrained spoofing of their professional brethren, their learned articles and their copious footnotes, tables and appendices. We quote below from the opening and closing paragraphs, regretfully omitting the footnotes for want of space and offering to lend our copy to anyone who wants to find out what comes in between:

> "The pioneering Warren-Brandeis article on the right of privacy has set an example for authors ever since its publication, for when an author is in doubt about a topic for his next article he can always do what Warren and Brandeis did—invent a new tort and write about it. The Warren-Brandeis article has been much cited; the very fact of the extensive citation of the article has suggested to us the invention of a new tort which we propose to write about—the failure by a court, without justification, to cite a law review article, or, as we have suggested in the title of this paper, the unprivileged refusal by a court to reap where it has not sown. We suggest that there is a duty that courts cite law review articles, and we propose to explore some of the ramifications of this common-law duty. . . .
>
> "The question may well arise as to what can be done immediately, awaiting development by courts and legislatures of our proposed theories of liability. We can suggest one means of self-help . . . that henceforth . . . all [professors should] not cite in their articles judicial opinions which do not contain a reasonable number of citations of law professors' articles. We have, in composing our pioneering paper on unprivileged refusal to reap where one has not sown, sought to illustrate the operation of our suggested self-help principle. In various places in our paper, we could have referred to specific court decisions. These places have been indicated by footnote references in the text. But actual citations to these cases have not been included in the footnotes; we have these footnotes on file in our offices, and will be happy to supply them to interested readers, on the condition that they not be cited publicly as having aided us in the formulation of our views."[1]

With all deference to the authors we fear their nascent delict will never get off the ground with a name like "the unprivileged refusal by a court to reap where it has not sown." We suggest something shorter and snappier such as "unreap" or "profscorn." Or, if its inventors want to follow the practice of certain physical scientists, they might rechristen it "Horonett," but we would avoid "Nettwitz."

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Gerald C. Snyder, President of Illinois State Bar Association, has been talking to lawyers all over that state about what he refers to as "the economic anemia of the legal profession." The Board of Governors of the Association has "ordered a complete examination of the subject, to be followed by a diagnosis of the cause of the condition and a prescription for its cure." As part of this effort every lawyer in the state has been asked to respond, anonymously, to a questionnaire relating to his 1959 income.

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